IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 23632 of 1995

Between:

The APSTC Employees Union,

Rep.by K.Kashinath, S/o. Late Kishna Singh,
R/o. 10-5-2/1/38/2, Masabtank,
Hyderabad.

..... PETITIONER

AND

1 Government of A.P.
Rep. by its Principal Secretary Commissioner of Industries and Commerce Department
Secretariat, Hyderabad.
2 A.P.State Trading Corporation Limited
rep. by its Vice-Chairman & Managing Director F.M.Road,
Hyderabad - 4.
3 Secretary to the Government Finance & Planning Department,
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an writ or direction more in the nature of writ of mandamus declare the action of the respondents in issuing G.O.Ms.No.336 Finance & Planning (Fin.Wing) Dept. dt.29-10-1993 as highly arbitrary illegal and unconstitutional and further declare the action of the first respondent in issuing the order in letter No.967/T&C/A2/94-5, dt.19-6-1995 and consequential proceedings of the 2nd respondent herein in APSTCCAT/PB/95 dt.6-7-1995 as arbitrary and illegal and consequently direct the respondents to pay the Bonus to the employees of the corporation.

Counsel for the Petitioner: MR.RUPENDRA MAHENDERA

Counsel for the Respondents 1 & 3: GP FOR Industries & Commerce

Counsel for the Respondent No.2 : Mr.P.Venugopal.

The Court made the following :

THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.23632 OF 1995

ORDER:

The petitioner-A.P.State Trading Corporation Employees Union, has filed this writ petition questioning the G.O.Ms.No.366, dated 29.10.1993 issued by the first respondent and the consequential demand notice dated 6.7.1995 of the second respondent.

The members of the petitioner union, who are 69 in number, are employees of the second respondent and they were paid bonus during the year 1993-1994 amounting to Rs.2,40,909-35 ps. Subsequently, pursuant to G.O.Ms.No.366, dated 29.10.1993, the first respondent-Government has issued impugned letter dated 19.6.1995 in No.967/T&C/A2/94-5 directing the second respondent-Corporation to recover the bonus already paid to its employees. Consequently, demand notices were issued to the individual employees to recover the said amount in six instalments. The grievance of the petitioner is that the Government cannot take such decision and issue Order without examining the financial position of each company. Further it is submitted that in any event during the relevant year the second respondent-Corporation has earned profits to a tune of Rs.74 laks and basing upon the profits, allocable surplus was calculated and after approval of the Board of Directors, bonus was paid to the employees, therefore, there cannot be a unilateral direction from the first respondent to recover the said amounts paid to the employees.

The first respondent filed counter stating that the said amounts were paid contrary to

Government Orders issued in G.O.Ms.No.366, dated 29.10.1993 and as such orders were passed for recovery of the said amounts.

In the counter filed by the second respondent-Corporation, of which the members of the petitioner union are employees, it is stated that it is a Government undertaking and in view of the instructions issued vide its letter dated 19.6.1995 by the Government, orders were issued for recovery of the bonus paid.

From the counters filed on behalf of the respondent, it is not in dispute that no enquiry was conducted and no notice was issued to the petitioner by the Government or the second respondent-Corporation before passing order recovering the amounts paid as bonus. Even from the counter of second respondent, it is clear that the second respondent-Corporation has earned profits during the relevant year to a tune of Rs.74 lakhs and basing on the profits and allocable surplus certain percentage of bonus was proposed and paid to the employees. A reading of the Government Order issued vide G.O.No.366, indicates that the same was issued as an adhoc measure pending final decision in the matter.

Inasmuch as bonus was paid out of profits and surplus allocated, with the approval of the Board of directions, unless members of petitioner union are put to notice, no order directing recovery of the bonus paid, can be passed. It is not in dispute that the orders of the Government dated 19.6.1995 issued in Lr.No.967/T&C/A2/94-5 and the consequential demand notice of the second respondent-Corporation dated 6.7.1995 were issued without conducting any enquiry and without any prior notice to the members of the petitioner union. In that view of the matter, the said orders are liable to be set aside.

Accordingly, instructions of the first respondent in Lr.No.967/T&C/A2/94-5, dated 19.6.1995 and the consequential proceedings of the second respondent-Corporation dated 6.7.1995 are hereby set aside.

As far as the validity of G.O.Ms.No.366, dated 29.10.1993 is concerned a reading of the said G.O. shows that it is issued as an adhoc measure pending final decision in the matter. In that view of the matter, the petitioner-union to make a representation in this regard, if no final decision is taken in the matter by the first respondent, within a period of six weeks from the date of receipt of a copy of this order. On making such representation by the petitioner, the first respondent shall take into consideration the said representation, before taking final decision in the

matter.

With the above observation the writ petition is allowed in part setting aside the order of the first respondent in Lr.No.967/T&C/A2/94-5, dated 19.6.1995 and the consequential proceedings of the second respondent-Corporation dated 6.7.1995.

The writ petition is allowed to the extent indicated above. No order as to costs.

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JUSTICE R.SUBHASH REDDY

24.1.2005.

MDAA.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday, the 24th day of January, two thousand and five.

Copy to:

1 Principal Secretary Commissioner of Industries and Commerce Department Government of A.P., Secretariat, Hyderabad.

2 The Vice-Chairman & Managing Director

A.P.State Trading Corporation Limited F.M.Road,
Hyderabad - 4.

3 Secretary to the Government Finance & Planning Department,
Secretariat, Hyderabad.

4. Two C.Cs to G.P.for Labour, High Court of A.P., Hyderabad (OUT).

5. Two C.D.copies.